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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/483,766	01/19/2000	Veronique Mahe	ROC-17	8806

7590

03/19/2003

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EXAMINER

FUBARA, BLESSING M

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 03/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/483,766

Applicant(s)

MAHE ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Examiner acknowledges receipt of request for extension of time and non-compliant amendment B filed 09/25/02 and request for extension of time and amendment C filed 12/09/02.

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

All three inventors failed to supply the date of execution of the declaration. Applicants on page 4 of the remarks filed 09/25/02 indicate that “a declaration detailing the inventor’s unavailability and applicants’ efforts to locate said inventor will be submitted.” However, the office has so far not received the new declaration. A declaration appropriately executed by all inventors is required.

Claim Rejections - 35 USC § 112

Claims 1-20 remain rejected under 35 U.S.C. 112, second paragraph and new claims 21-37 are included in this rejection, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants indicated that “glacier SG 809 A” have been removed from claims 1 and 4. However, claim 4 still contains the trademark. Applicants are respectfully requested to check all the pending claims for the occurrence of “glacier SG 809 A” and applicants are specifically referred to claims 18 and 24.

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Claim 24, line 2 and claim 31, line 2 recite “in particular” and applicants are respectfully invited to amend the claim by removing “particular” from the affected claims. Although, applicants indicated in the remarks, page 4, claims 24 and 31 recite the “particular” term.

The phrase “barely perceptible” in claims 1 and 21 is relative and renders the claims indefinite.

Claim Rejections - 35 USC § 103

2. The rejection of claims 1-20 and new claims 21-37 under 35 U.S.C. 103(a) as being unpatentable over applicants’ admitted prior art in view of Koga (JP 10,231,238) is withdrawn because applicants’ argument that menthol and menthyl lactate is not used together in the prior art and that applicants admission that menthol possesses freshening and anti-irritant properties would not have led one of ordinary skill in the art to combine menthol and methyl lactate of Koga in menthol/menthyl lactate ratio of from about 1/3 to about 1/10.

3. Since the art rejection is withdrawn, applicants are respectfully requested to rewrite the claims rejected under 35 U.S.C. 112, second paragraph, to overcome the issues under 35 U.S.C. 112. Applicants are also respectfully requested to provide new declaration that is appropriately executed by all the inventors.

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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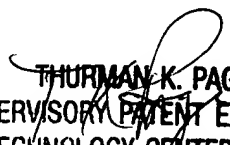
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
March 18, 2003


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600